

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GARDA WORLD

Employer

and

SPECIAL AND SUPERIOR OFFICERS  
BENEVOLENT ASSOCIATION

Petitioner

Case No. 29-RC-197242

and

UNITED FEDERATION OF SPECIAL  
POLICE AND SECURITY OFFICERS, INC.

Intervenor

REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S  
DECISION AND DIRECTION OF ELECTION

Pursuant to Section 102.67 of the Board's Rules and Regulations, United Federation of Special Police and Security Officers, Inc.<sup>1</sup>, Intervenor in the subject case, requests review of Acting Regional Director, Nancy Reibstein, Decision and Direction of Election issued on September 20, 2017.

Background

UFSPSO is the incumbent collective bargaining representative of an appropriate unit of security employees at the Employer's Long Island City, New York armored car terminal. It has represented that bargaining unit since 1997. The last full term collective bargaining agreement, in evidence as Intervenor exhibit 1, had a term of June 1, 2013 to May 31, 2016. Negotiations on a successor agreement commenced on or about May 1, 2016. The subject petition was filed on April 20, 2017, and a hearing was held on August 25, 2017.

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<sup>1</sup> Hereafter UFSPSO or Union

On September 20, 2017<sup>2</sup>, Acting Regional Director Nancy Reibstein issued a Decision and Direction of Election rejecting the Union's contention that an election was barred under the Board's contract bar doctrine.

### Request For Review

UFSPSO submits that Board review of the Decision and Direction of Election is warranted because the Regional Director's finding that there is no contract bar is clearly erroneous based on the facts in the record and that the error prejudicially denies Intervenor the protections of the contract bar doctrine.

### Facts

Intervenor exhibit numbers 1, 2,3,4,5 and 6 were received into the record via the testimony of UFSPSO President Charles Strebeck. Strebeck testified that Intervenor exhibit 2 is a tentative agreement signed and dated by both parties on March 6. It was identified to Strebeck by the Employer on March 6 as its last, best and final offer. Strebeck further testified that that exhibit, together with the terms and conditions of the June 1, 2013 to May 31, 2016 contract (Intervenor exhibit 1) and Intervenor 6 which documents the agreement on non-economic items not modified by the terms of the March 6 agreement, fully established the terms and conditions of employment for the term of the new agreement.

Strebeck testified that the tentative agreement signed on March 6 was put through the Union's ratification/strike authorization process on April 6 and 7 and became binding on the Union as a result of that process. Strebeck so informed the Employer on April 12, 2017 (see exhibit Intervenor 4).

### Argument

The decision by the Acting Regional director relied solely on the March 6th document and concluded that this document did not contain substantial terms and conditions, however in the Boards most recent publication dated September 14 ,2017 Outline of Law and Procedure in Representation cases 9. CONTRACT BAR page 85 it states, "the contract -bar doctrine does not require a "formal, final document". It can be satisfied by a group of informal documents provided they

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<sup>2</sup> All dates hereafter is 2017 unless otherwise noted.

lay out substantial terms and conditions of employment and that they are signed. (Waste Management of Maryland, Inc 338 NLRB 1002,1002-1003 (2003)) Additionally, on page 86 9-120 The contract must be signed by all parties before the rival petition is filed. The signatures do not have to be on the same formal document (Holiday Inn of Fort Pierce 225 NLRB 1092(1976)) On page 87 it states 9-130 The board does not require that an agreement delineate completely every single one of its provisions in order to qualify as a bar (USM Corp 256 NLRB 996,999 fn.18 (1981)). ON page 87 it also states that under Appalachian Shale a contract must be signed by all parties preceding the petition, it also states This does not mean that a contract must be formal documents or that they cannot consist of an exchange of a written proposal and written acceptance (Georgia Purchasing Inc 230 NLRB 1174 (1977))

Together, Intervenor exhibits 1,2, and 6 fully establish the complete terms and conditions of employment for the unit employees for the term June 1, 2016 to May 31, 2019. Exhibit Intervenor 2 was signed and dated by both parties on March 6. It became binding on the Union upon completion of the ratification/strike authorization process on April 7, and on the Employer on April 12 when Strebeck informed the Employer of the Union's acceptance of the agreement.

The foregoing facts establish that the tentative agreement signed on March 6 together with the terms and conditions of the expired agreement not modified by the tentative agreement meet the criteria for contract bar established in Appalachian Shale Products Co., 121 NLRB 1160 (1958). The offer is written in clear and concise terms, it establishes substantial if not complete terms and conditions of employment, it is signed and dated by both parties, it was accepted by the Union following completion of the ratifications/strike authorization process, and acceptance was communicated to the Employer on April 12, 2017 all well before the rival petition was filed on April 20. The circumstances of this case are similar to those in St. Mary's Hospital and Medical Center, 317 NLRB 89 (1995). They differ from those in DePaul Adult Care Communities, Inc., 325 NLRB 681 (1998) where no contract bar was found because the employer, while acknowledging that a document accurately reflected agreement on all open subjects in the negotiations, never signed the document. The lack of a signature

from the employer was the basis for finding no contract bar. In the subject case, the document that UFSPSO urges constitutes a contract bar is signed and dated, and was offered and accepted prior to filing of the rival petition. Accordingly, UFSPSO urges the Board to find that an election is barred under its contract bar doctrine and to dismiss the petition.

Respectfully submitted,

United Federation of Special Police and Security Officers, Inc.

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Charles Strebeck, President

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Date